

CJ-12-449238 OOCF

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD. and
PICKERING AUTO MALL LTD.**

Plaintiffs

- and -



**YAZAKI CORPORATION, YAZAKI NORTH AMERICA INC. and DOE
CORPORATION Nos 1 to 10**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: March 19, 2012

Issued by: Sopano M. Sagaria
Local Registrar Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: YAZAKI CORPORATION
17th Floor, Mita-Kokusai Bldg., 4-28 Mita 1-chome
Minato-ku, Tokyo, 108-8333, Japan

AND TO: YAZAKI NORTH AMERICA INC.
6801 Haggerty Road
Canton, Michigan, 48187, USA

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the proposed class:

- (a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price of Fuel Senders and Instrument Panel Clusters sold in Canada during the Class Period;
- (b) A declaration that the defendants did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Fuel Senders and Instrument Panel Clusters were supplied in Canada during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$50,000,000:
 - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, R.S.C. 1985, c. C-34 ("*Competition Act*");
 - (ii) for civil conspiracy; and
 - (iii) for unjust enrichment;
- (d) An injunction, interlocutory and permanent, enjoining the defendants, their affiliates, successors, transferees and assignees and officers, directors, partners, agents and employees thereof, from maintaining or renewing the conduct, conspiracies, agreements or arrangements alleged herein, or from entering into

any other conduct, conspiracies, agreements or arrangements having a similar purpose or effect;

- (e) Punitive, exemplary and aggravated damages in the amount of \$5,000,000;
- (f) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*Courts of Justice Act*"), as amended;
- (g) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (h) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (i) Such further and other relief as this Honourable Court deems just.

Summary of Claim

2. This lawsuit centres on a conspiracy by the defendants, who supply fuel senders ("**Fuel Senders**") and instrument panel clusters ("**Instrument Panel Clusters**") used in automobiles, to fix, maintain, increase and control the prices, rig bids and allocate the market and customers in Canada and elsewhere for those products. The conspiracy was in effect from December 1, 2002 to a time known only to the defendants, but no earlier than March 1, 2010 (the "**Class Period**"), and targeted the Canadian automotive industry, raising prices to all members of the proposed class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and the proposed class paid artificially inflated prices for automobiles containing Fuel Senders and Instrument

Panel Clusters manufactured, marketed or sold by the defendants during the Class Period and have thereby suffered losses and damages.

The Parties

4. The plaintiff, Sheridan Chevrolet Cadillac Ltd. ("**Sheridan**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited ("**GMCL**") from 1977 to 2009.

5. The plaintiff, Pickering Auto Mall Ltd. ("**Pickering**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.

6. The plaintiffs seek to represent the following class (the "**Proposed Class**"):

All entities that carried on business in Canada at any time from December 1, 2002 to the date of issuance of this statement of claim that purchased directly from an automotive manufacturer an automobile containing a Fuel Sender or Instrument Panel Cluster manufactured, marketed or sold by one the defendants or any of their affiliates.

Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

7. The Proposed Class consists primarily of automotive dealers in Canada. The precise number of members of the Proposed Class is not known but estimated to be several thousand.

8. The defendant, Yazaki Corporation ("**Yazaki Japan**"), is a Japanese corporation. Yazaki manufactured, marketed, sold and distributed either directly or indirectly through its predecessors, affiliates and subsidiaries, including the defendant, Yazaki North America Inc.

(“**Yazaki NA**”), Fuel Senders and Instrument Panel Clusters that were purchased in Canada during the Class Period. Yazaki NA is incorporated under the laws of the State of Delaware in the United States of America and has its principal place of business in Canton Township, Michigan. Yazaki NA is owned and controlled by Yazaki Japan. Yazaki Japan and Yazaki NA are referred to herein as “**Yazaki.**”

9. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, and individuals, the identities of which are presently unknown, including senior executives and employees of Yazaki, have participated as co-conspirators with Yazaki in the unlawful conduct alleged in this statement of claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the unlawful conduct.

10. The defendants, Doe Corporation Nos 1 to 10, are corporations, the identities of which are presently unknown to the plaintiffs, that participated as co-conspirators with Yazaki in the unlawful conduct alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the unlawful conduct alleged herein. Hereafter, “**Doe Corporations**” shall refer to one or more of Doe Corporation Nos 1 to 10.

11. Yazaki and Doe Corporations are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

12. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they

were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

The Fuel Senders and Instrument Panel Clusters Industry

13. Fuel Senders reside in the fuel tank of an automobile and measure the amount of fuel in the tank. Fuel Senders consist of a float, which is attached to a long metal rod attached to a variable resistor. The resistor measures the amount of pressure the float puts on the bar. As the fuel goes down, the float goes down with it. As it dips, the electrical current in the variable resistor sends weaker electrical signals to the fuel gauge. The gauge will then drop accordingly, indicating there is less fuel in the tank.

14. Instrument Panel Clusters, also known as meters, are the mounted array of instruments and gauges housed in front of the driver of an automobile.

15. Fuel Senders and Instrument Panel Clusters are installed by automobile original equipment manufacturers (“OEMs”) in new cars as part of the automotive manufacturing process. They are also installed in cars to replace worn out, defective or damaged Fuel Senders or Instrument Panel Clusters.

16. For new cars, OEMs – mostly large automotive manufacturers such as General Motors, Chrysler, Toyota and others – purchase Fuel Senders and Instrument Panel Clusters directly from Yazaki. Fuel Senders and Instrument Panel Clusters may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called “**Tier Manufacturers**” in the industry. A Tier I manufacturer supplies Fuel Senders and Instrument Panel Clusters directly to an OEM.

17. When purchasing Fuel Senders and Instrument Panel Clusters and related products, OEMs issue Requests for Quotation (“RFQs”) to automotive parts suppliers. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. OEMs usually award the business to a selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the bidding process begins approximately three years before the start of production of a new model.

18. The plaintiffs and members of the Proposed Class purchased Fuel Senders and Instrument Panel Clusters indirectly from Yazaki and Doe Corporations. During the Class Period, Yazaki and Doe Corporations supplied Fuel Senders and Instrument Panel Clusters to OEMs for installation in vehicles manufactured and sold in Canada and elsewhere. Yazaki and Doe Corporations manufactured Fuel Senders and Instrument Panel Clusters: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) in Japan for export to North America and installation in vehicles manufactured in North America and sold in Canada, and (c) in Japan for installation in vehicles manufactured in Japan for export to and sale in Canada.

19. Yazaki and Doe Corporations intended as a result of their unlawful conspiracy to inflate the prices for cars sold to automotive dealers in Canada and elsewhere.

20. Yazaki unlawfully conspired with Doe Corporations to agree upon and manipulate prices for Fuel Senders and Instrument Panel Clusters and to mislead and conceal their anti-competitive behaviour from OEMs and automotive dealers. Yazaki and Doe Corporations knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Fuel Senders and Instrument Panel Clusters would be sold to OEMs from the price that could be charged on a

competitive basis. By charging inflated prices to OEMs, Yazaki and Doe Corporations knew that their unlawful scheme and conspiracy would injure the plaintiffs and all members of the Proposed Class. Yazaki and Doe Corporations were aware that increasing the cost of Fuel Senders and Instrument Panel Clusters to OEMs would inflate the prices at which OEMs would sell to automobiles to the plaintiffs and all members of the Proposed Class.

21. Yazaki is one of the largest manufacturers and suppliers of Fuel Senders and Instrument Panel Clusters in Canada and the world. Its Fuel Senders and Instrument Panel Clusters are used by most carmakers in Japan. Yazaki's largest customers include Chrysler, General Motors, Honda and Toyota.

Investigations into International Cartel and Resulting Fines

22. A globally coordinated investigation into collusion in the automotive parts industry is underway in the United States of America, Europe, and Japan.

23. Several automobile parts suppliers, including Yazaki, have been the subject of information requests or search warrants by competition authorities in Japan, Europe or the United States of America in relation to the international investigation.

24. The United States Department of Justice ("USDOJ") is conducting an investigation of potential collusion in the Fuel Senders and Instrument Panel Clusters industries affecting the North American automotive market.

25. On January 30, 2012, the USDOJ announced that Yazaki agreed to pay a \$470 million fine stemming from its participation in three unlawful conspiracies to fix prices and rig bids for

certain automotive parts, including Fuel Senders and Instrument Panel Clusters. The third conspiracy in which Yazaki participated related to automotive wire harnesses and is the subject of a claim by the plaintiff in Superior Court of Justice action no. CV-12-44673700CP commenced on February 17, 2012.

26. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Fuel Senders and Instrument Panel Clusters in the United States of America and Canada, including Ontario.

Plaintiffs Purchased Vehicles Containing Fuel Senders and Instrument Panel Clusters Manufactured and Sold by Defendants

27. Sheridan purchased for resale during the Class Period the following brands of vehicles manufactured by General Motors of Canada Limited (“GMCL”) or its affiliates: Chevrolet, Oldsmobile and Cadillac.

28. Sheridan also purchased for resale vehicles during the Class Period manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company and Daewoo Motor Co.

29. Pickering purchased for resale during the Class Period the following brands of vehicles manufactured by GMCL or its affiliates: Isuzu, Saab and Saturn.

30. Pickering also purchased for resale during the Class Period vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG and Subaru Canada Inc.

31. The vehicles purchased by Sheridan and Pickering were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States of America, Japan and other parts of the world.

32. Sheridan and Pickering purchased vehicles containing Fuel Senders and Instrument Panel Clusters manufactured and sold by Yazaki and Doe Corporations that were the subject of the conspiracy described herein.

Breaches of Part VI of *Competition Act*

33. From December 2002 until at least March 2010, Yazaki and Doe Corporations engaged in a conspiracy to rig bids for and to fix, maintain, increase or control the prices of Fuel Senders and Instrument Panel Clusters sold to customers in Canada and elsewhere.

34. Yazaki and Doe Corporations carried out the conspiracy by:

(a) participating in meetings, conversations, and communications in the United States of America, Japan and elsewhere to discuss the bids and price quotations for Fuel Senders and Instrument Panel Clusters to be submitted to OEMs selling automobiles in Canada and elsewhere;

(b) agreeing, during those meetings, conversations, and communications, on bids and price quotations for Fuel Senders and Instrument Panel Clusters to be submitted to OEMs in Canada and elsewhere;

- (c) agreeing on the prices to be charged and to control discounts for Fuel Senders and Instrument Panel Clusters in Canada and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Fuel Senders and Instrument Panel Clusters sold to OEMs in Canada and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by OEMs in Canada and elsewhere;
- (f) submitting bids, price quotations, and price adjustments to OEMs in Canada and elsewhere in accordance with the agreements reached;
- (g) selling Fuel Senders and Instrument Panel Clusters to OEMs in Canada and elsewhere at collusive and supra-competitive prices;
- (h) accepting payment for Fuel Senders and Instrument Panel Clusters sold to OEMs in Canada and elsewhere at collusive and supra-competitive prices;
- (i) engaging in meetings, conversations, and communications in the United States, Canada, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (j) employing measures to keep their conduct secret, including but not limited to using code names and meeting at private residences or remote locations; and
- (k) preventing or lessening, unduly, competition in the market in Canada in the production, manufacture, sale or distribution of Fuel Senders and Instrument Panel Clusters in Canada.

35. As a result of this international bid-rigging and price-fixing conspiracy, OEMs paid supra-competitive prices for Fuel Senders and Instrument Panel Clusters installed in vehicles sold to members of the Proposed Class and, as a result, sold automobiles to the members of the Proposed Class at inflated costs.

36. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs claim losses and damages under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

37. Such conduct further constituted an offence under section 61(1) of the *Competition Act* for the period from December 1, 2002 until the repeal of that section on March 12, 2009. The plaintiffs claim damages under section 36(1) of the *Competition Act* in respect of conduct contrary to section 61(1) of the *Competition Act* for the period from December 1, 2002 to March 12, 2009.

Civil Conspiracy

38. Yazaki entered into agreements with Doe Corporations and other unnamed co-conspirators to use unlawful means which resulted in losses and damages, including special damages, to the plaintiffs and members of the Proposed Class. The unlawful means include the following:

- (a) entering into agreements to rig bids and fix, maintain, increase or control prices of Fuel Senders and Instrument Panel Clusters sold to customers in Canada and elsewhere in contravention of sections 45(1), 46(1), 47(1) and (during the period in which it was in force) 61(1) of the *Competition Act*;

- (b) entering into agreements to rig bids and fix, maintain, increase or control prices of Fuel Senders and Instrument Panel Clusters sold to customers in Canada and elsewhere in contravention of the laws of the United States of America, Japan and other countries; and
- (c) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code* R.S.C. 1985, c. C-46.

39. In furtherance of the conspiracy, Yazaki, Doe Corporations, their respective servants, agents and unnamed co-conspirators carried out the acts described in paragraph 38 above.

40. Yazaki, Doe Corporations and unnamed co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class by requiring them to pay artificially high prices for Fuel Senders and Instrument Panel Clusters, and to illegally increase their profits on the sale of Fuel Senders and Instrument Panel Clusters.

41. Yazaki, Doe Corporations and unnamed co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, Yazaki, Doe Corporations and unnamed co-conspirators knew in the circumstances their unlawful acts would likely cause injury.

Unjust Enrichment

42. As a result of their conduct, Yazaki and Doe Corporations benefited from a significant enhancement of their sales volumes, profits and market share. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices

for vehicles containing Fuel Senders and Instrument Panel Clusters. There is no juristic reason or justification for Yazaki's and Doe Corporations' enrichment, as such conduct is unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place and is tortious and unjustifiable.

43. It would be inequitable for Yazaki and Doe Corporations to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

44. The plaintiffs and the members of the Proposed Class are entitled to the amount of Yazaki's and Doe Corporations' ill-gotten gains resulting from their unlawful and inequitable conduct.

Damages

45. Yazaki's and Doe Corporations' conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Fuel Senders and Instrument Panel Clusters sold to OEMs selling vehicles to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Fuel Senders and Instrument Panel Clusters have been fixed, maintained, increased or controlled at artificially inflated levels for resale as a component of a vehicle sold to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada; and

(c) the plaintiffs and members of the Proposed Class have been deprived of free and open competition for Fuel Senders and Instrument Panel Clusters in Ontario and the rest of Canada.

46. Fuel Senders and Instrument Panel Clusters are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Fuel Senders and Instrument Panel Clusters follow a traceable chain of distribution from Yazaki and Doe Corporations to OEMs (or alternatively to the Tier Manufacturers and then to OEMs) and from OEMs to the plaintiffs and the members of the Proposed Class. Costs attributable to Fuel Senders and Instrument Panel Clusters can be traced through OEMs to the plaintiffs and the members of the Proposed Class.

47. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses to their businesses by virtue of having paid higher prices for vehicles containing Fuel Senders and Instrument Panel Clusters than they would have paid in the absence of Yazaki's and Doe Corporations' illegal conduct. As a result, the plaintiffs and the members of the Proposed Class have suffered losses and damages in an amount not yet known but to be determined. Full particulars of the losses and damages will be provided before trial.

48. Because Yazaki's and Doe Corporations' conspiracies, agreements or arrangements were concealed, the plaintiffs and members of the Proposed Class were unaware of the unlawful conduct and could not have discovered its existence through reasonable diligence.

Punitive, Aggravated and Exemplary Damages

49. Yazaki and Doe Corporations used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Fuel Senders and Instrument Panel Clusters. They were aware at all times that their actions would have a significant adverse impact on all members of the Proposed Class. Yazaki's and Doe Corporations' conduct was high-handed, reckless, without care, deliberate and in disregard of the plaintiffs' and Proposed Class members' rights.

50. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

Injunctive Relief

51. The unlawful conduct alleged herein has caused and will continue to cause irreparable harm to the members of the Proposed Class. The plaintiffs request interlocutory and permanent injunctive relief enjoining Yazaki and Doe Corporations, their respective affiliates, successors, transferees and assignees and officers, directors, partners, agents and employees thereof, from maintaining or renewing the conduct, conspiracies, agreements or arrangements alleged herein, or from entering into any other conduct, conspiracies, agreements or arrangements having a similar purpose or effect.

Service of Statement of Claim Outside Ontario

52. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

- (a) Rule 17.02 (f)(i) – the claim relates to a contract made in Ontario;
- (b) Rule 17.02 (g) – the claim relates to a tort committed in Ontario; and
- (c) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (d) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

The plaintiff asks that the trial of this action take place at Toronto, Ontario.

March 19, 2012

SOTOS LLP

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Plaintiffs

-and-

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STATEMENT OF CLAIM

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